



**American Short Line and
Regional Railroad Association**

The Voice of America's Independent Railroads

234876

ENTERED

Office of Proceedings

September 23, 2013

Part of

Public Record

September 23, 2013

Honorable Cynthia Brown
Secretary
Office of the Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: Ex Parte No. 711, Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Notice of Intent to Participate

Dear Secretary Brown:

The American Short Line & Regional Railroad Association ("ASLRRA") is filing this Notice to Participate at the hearing set for October 22, 2013, in the captioned proceeding. The speaker for the ASLRRA will be Richard F. Timmons, President of the Association. The ASLRRA requests fifteen (15) minutes to present its testimony. Enclosed with this letter is a Summary of the Intended Testimony of the ASLRRA.

Sincerely,

Keith T. Borman
Vice President & General Counsel

cc: Ed McKechnie

EX PARTE NO. 711
PETITION FOR RULEMAKING
TO ADOPT REVISED COMPETITIVE SWITCHING RULES

SUMMARY OF INTENDED TESTIMONY OF THE ASLRRRA

1. ASLRRRA continues to oppose the NITL proposal as being injurious to the national rail network, with particularly adverse consequences for 550 Class II and III railroads ("Small Railroads") operating in 49 states.
2. While the NITL proposal provides that Small Railroads would be exempted from its provisions, the NITL petition is ambiguous, and at best, needs to be clarified to ensure that Small Railroads are exempted under the proposal's terms and under any future imposition of it. Specifically, if the Board decides to adopt the NITL petition, its application should be expressly limited to situations in which no Small Railroad participates at any point in the movement of the subject traffic whether the Small Railroad appears on the waybill.
3. There are additional adverse effects that imposition of this proposal would engender:
 - An example of how Small Railroads would be drawn inadvertently into any mandatory switching rules involves movements in which the Small Railroad is not shown on the waybill but still sets its own pricing for the final miles of transportation to and from the customer. As written, if the Small Railroad's connecting Class I must offer a competing Class I access to a shipper, the connecting Class I may be forced to grant access over the Small Railroad's route. Though unintended by the proposed rule, the Small Railroad would involuntarily exchange its compensatory short haul rate for a modest government-imposed access fee that would likely impact the overall viability of the Small Railroad.
 - Another example is when a Small Railroad is merely providing contractual switching services to a Class I carrier as its "first mile/last mile" switch carrier. If the Class I either (a) is required to provide another Class I carrier access or (b) reduces its switching charge to meet the requirements of a mandated switching rule, as a practical matter the Class I carrier will pressure the Small Railroad to renegotiate its contract to a lower rate reflecting the regulatory limitation applicable to the Class I carrier.
4. While a Class I carrier could, as a result of re-regulation of switch charges, absorb a reduction in overall revenues that generally compensate the Class I for long haul moves, it is a far different matter for Small Railroads. The median length of haul for Class III railroads is only 15 miles and switching operations represent a disproportionate amount of Small Railroad revenues if switching is defined as movements of less than 30 miles, as proposed in the NITL petition. None of the analyses submitted by advocates of the NITL petition identified shipments involving Small Railroads at the origin or destination that are not shown on the waybill. In the ASLRRRA study conducted for EP 705, 40% or more of the carloads in many commodity classifications were handled by Small Railroads at either origin or destination. Thus, the advocates of the NITL petition fail to acknowledge both the frequency with which Small Railroads would be involved in moves subject to the proposed rule and the disproportionately adverse effect a government-imposed fee would have on Small Railroads' revenues.
5. The NITL statement that the potential loss of railroad revenue would be small – in the low single digits as a percent of overall carrier revenues for Class I railroads – is inaccurate concerning Small Railroads. The problem for Small Railroads is that a significant revenue reduction from even one large customer has an outsized negative impact, since two or three customers typically generate the majority of a Small Railroad's revenues.

6. Maintaining an exemption for Small Railroads into the future will be difficult. Once a government pricing scheme is imposed on Class I carriers, shippers and others looking to reduce their transportation costs will question the fairness of having to pay more for Small Railroad service. Even if the shippers do not focus on fairness, they will begin to shift their business from perceived high-cost switching carriers to locations where a cheaper government-mandated access fee prevails, to the detriment of the Small Railroad industry. This logical strategy would lessen competition over the longer term and the availability of rail infrastructure currently maintained by Small Railroads for the benefit of those shippers that are not within a "reasonable distance" of a "working interchange." This is a critical issue for shippers because keeping rail transportation options available on the light-density parts of the national rail network is the very essence of the Small Railroads' role.

7. The modern Small Railroad industry sector has been created largely by Class I railroad system rationalization, whereby lines that did not meet return-on-asset standards were divested to new operators. In the future, the unintended consequence of downward pressure on short-haul rates through either mandated switch charges or government-set access fees may minimize the ability of Class I's to continue the process of transferring lines to Small Railroads when it makes operating or financial sense to do so. With the eventual downward pressure on short haul rates, it is very unlikely that a Small Railroad would be able to profitably operate these labor intensive switching operations. As a result, the short line spin-off programs that have saved rail infrastructure will cease to exist, and abandonments and fewer service options for shippers will be the end result.

8. Imposition of the NITL proposal on Small Railroads will make it more difficult immediately for Small Railroads to obtain capital to build and maintain their systems at a reasonable cost as the market quickly marks down their future cash flows.

9. The proposal to adopt inter-switching rules such as those administered by Transport Canada is wrong-headed, as those rules are largely inapplicable to the U.S. rail industry as a whole and are wholly irrelevant to the operations of Small Railroads in this country.

10. Small Railroads have virtually no bargaining opportunity to enter into reciprocal switching agreements, since they typically operate at only one or two local interchange locations. The ability of the Small Railroads to maximize revenues from their single, limited operating territories is critical to their viability and none of the other fee proposals is tenable.

11. The notion of an URCS-based limit on revenue over variable cost such as 180% would be an unreasonable alternative for an access fee regime. In fact, any notion that revenue over variable cost might be appropriate for limiting the price of a movement between a customer facility and an interchange point would be extremely harmful to Small Railroads. *First*, URCS costs are based on Class I operations and have no relevance to Small Railroad costs of operating light-density, labor intensive properties delivering carload traffic. *Second*, the nature of terminal operations equates to high fixed costs. A regulatory limit based on any kind of variable-cost analysis would deprive Small Railroads of any recovery of the real cost driver for terminal or switching movements. In fact, the pricing model for most Small Railroads is completely different from the model for Class I railroads, whose rates are based in part on length of haul. Most Small Railroad rates are not. The issue of "cost variability" is completely different for Class I carriers and Small Railroads. In the face of limits tied to the revenue-over-variable-cost formula, Small Railroads would have no option to adjust. Under this scenario, many Small Railroads would likely shut down if forced to cut their switch charges below current market rates, since there is no corresponding opportunity to cut costs or increase revenues elsewhere.

12. Since up to 90% of Small Railroad traffic is subject to competition from trucks or barges, the presence of the Small Railroad is strong evidence that competition to the interchange already exists. Thus, limiting the application of

the rule to movements where no Small Railroad participates should not have any adverse implications for shippers. The fact is, anything that would cause the efficiencies of rail network system to be disrupted would serve to drive traffic to trucks to the detriment of Small Railroads, and the NITL proposal, if adopted, would certainly cause disruptions in the national rail network.